

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLAS FERNANDEZ,

Plaintiff,

Case No.: 07 CV 11575 (RJS)

v.

ONCE UPON A TART, INC.,

Defendant.

**JOINT MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT AND DISMISSAL WITH PREJUDICE**

The Plaintiff and the Defendant, by and through their undersigned attorneys, file this Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice, and state as follows:

On December 26, 2007, Plaintiff filed and subsequently served upon Defendant his Complaint, which alleged that Defendant failed to pay him overtime in violation of both the Fair Labor Standards Act ("FLSA") and the New York Labor Law.

After having examined and comprehensively discussed the issues involved in this matter, the parties have determined that they wish to avoid the costs and uncertainty of litigation. Accordingly, the parties have negotiated a settlement of this matter. Pursuant to Lynn's Food Stores, Inc. v. United States, 679 F.2d 1350 (11th Cir. 1982), claims for back wages arising under the FLSA may be settled or compromised only with approval of the District Court or

Secretary of Labor. The parties respectfully request that they be permitted to provide a copy of the settlement agreement to the Court for an *in camera* review.

The parties have also attached Exhibit A, a proposed Final Order of Dismissal. Accordingly, the parties respectfully request that the Court approve the terms of the settlement agreement in this matter for the reasons set forth below.

MEMORANDUM OF LAW

In order to ensure that the employer is relieved of liability, a compromise of an FLSA claim must either be supervised by the Secretary of Labor. See Lynn's Food Stores, Inc., 679 F.2d. at 1350. To approve the settlement, the Court should determine that the compromise is a fair and reasonable resolution of a bona fide dispute over FLSA provisions. Id. At 1354. If the settlement meets the aforementioned criteria, the Court should approve the settlement in order to promote the policy of encouraging settlement of litigation. Id.; see also Sneed v. Sneed's Shipbuilding, Inc., 545 F.2d 537, 539 (5th Cir. 1977).

Plaintiff filed this lawsuit against Defendant alleging that Defendant violated the FLSA by failing to pay him time and one-half for work performed in excess of forty hours per week. The parties have agreed to settle this dispute through the execution of the settlement agreement. The parties agree that the settlement terms represent a fair and equitable resolution of this matter.

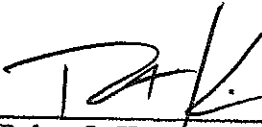
This case involved a bona fide factual dispute essentially regarding the number of hours Plaintiff allegedly worked, and the amount of wages, if any, owed to Plaintiff. It is very likely that these issues needed to be decided at trial. By obtaining this settlement, both parties were able to resolve this case without further litigation. For the reasons set forth above, this Court should approve the settlement.

WHEREFORE,


1. The parties respectfully request that the Court enter an Order approving the terms of the settlement. A proposed Order is set forth in Exhibit A;
2. The parties respectfully request the case be dismissed with prejudice;
3. The parties respectfully request that the Court retain jurisdiction to enforce the terms of the settlement; and,
4. The parties respectfully request that the Court grant them further relief as the Court deems just.

Respectfully submitted,

By:


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ONCE UPON A TART, INC.

Dated: February 27, 2008
New York, NY

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLAS FERNANDEZ,

Plaintiff,

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v.

ONCE UPON A TART, INC.,

Defendant.

FINAL ORDER AND DISMISSAL WITH PREJUDICE

THIS MATTER is before the Court on the parties' Joint Motion for Approval of Settlement Agreement and Dismissal With Prejudice. The Court has reviewed the aforementioned Joint Motion and the Court file herein.

ORDERED AND ADJUDGED that the Joint Motion is **GRANTED**. The Court finds that the Settlement Agreement is a fair and reasonable resolution of a bona fide dispute over FLSA provisions. Accordingly, the terms of the Settlement Agreement are approved, adopted and ratified.

This case is **DISMISSED** with prejudice. This Court shall retain jurisdiction to enforce the terms of the Settlement Agreement.

DONE AND ORDERED in New York, New York this ____ day of ____, 2008.

UNITED STATES DISTRICT COURT JUDGE

cc: See attached service list

SERVICE LIST

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